

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jason Berner,

Civ. No. 21-1639 (JWB/TNL)

Plaintiff,

v.

**AMENDED TRIAL NOTICE
AND FINAL PRETRIAL
ORDER**

Metropolitan Council,

Defendant.

Cases appearing on the attached list have been scheduled for trial before United States District Judge Jerry W. Blackwell beginning on **July 24, 2023**, at 9:30 a.m. in Courtroom 3A (St. Paul). Cases are generally tried in the order listed, but most of the cases likely will settle, and the remaining cases may be called out of order; thus, all parties must be prepared to try their cases on that date.

Because your trial may not commence on **July 24, 2023**, you are **not** to report to trial until you are called. Counsel should keep informed of the progress of cases listed before your own. If your case is not called for trial during the period indicated, it will be tried as soon thereafter as possible and should be kept on a “ready basis.” The timing of the scheduled trial assignment may be modified only by formal motion and a showing of good cause.

Questions regarding the calendar may be directed to Melissa Kruger, Judge Blackwell’s courtroom deputy, at 651-848-1160.

PRETRIAL CONFERENCE

Judge Blackwell will conduct a pretrial conference in Courtroom 3A at the United States Courthouse, 316 North Robert Street, St. Paul, MN, on **July 18, 2023 at 1:30 p.m.** All attorneys who will try the case or present any aspect of it must attend the final pretrial conference.

FINAL SETTLEMENT CONFERENCE

The parties must schedule a final settlement conference with the Magistrate Judge so that it is held before the pretrial conference.

TRIAL INSTRUCTIONS

1. **Submitting Documents.** All documents must be filed electronically and served on all parties, and one courtesy hard copy of the exhibits and two courtesy hard copies of every other document must be delivered to Judge Blackwell's chambers. Judge Blackwell prefers courtesy copies to be three-hole punched and tabbed. All exhibits and documents provided in hard copy must also be provided in electronic form (i.e., via a USB flash drive) and delivered to chambers.

2. **Trial Briefs.** Each party must serve and file a trial brief by **Tuesday, June 20, 2023**. In its trial brief, each party must include the following information:

- a. **Trial Counsel.** Each party must list the names, addresses, telephone numbers, fax numbers, and e-mail addresses of the attorney(s) who will try the case.
- b. **Jury/Non-Jury.** Each party must state whether they want the case tried to a jury or to the Court.
- c. **Length of Trial.** Each party must provide a realistic estimate of the length of the trial, including jury selection and jury charge, if applicable.
- d. **Claims or Defenses.** Each party must briefly describe each cause of action—including any claims, cross-claims, and counterclaims—and any affirmative defenses that will be tried.
- e. **Jurisdiction.** Each party must identify the basis for federal jurisdiction for each claim or defense for which it bears the burden of proof.
- f. **Facts.** Each party must provide a brief summary of the facts that the party intends to prove at trial.
- g. **Unresolved Issues.** Each party must identify any substantive, evidentiary, or procedural issues that remain unresolved. Each party

must briefly describe the party's position on the unresolved issues and identify the primary legal authority on which the party relies.¹

3. Exhibits.

- a. By **Monday, June 12, 2023**, the parties must exchange lists of the exhibits that they intend to offer at trial and make those exhibits available to the other parties for examination and copying.
- b. Each party must file a list of its exhibits and send **copies** of those exhibits to chambers by **Tuesday, June 20, 2023**. Original copies of the exhibits must **not** be submitted with the pretrial papers.
- c. The exhibit list should be submitted using the federal Exhibit List form available through the District of Minnesota website, www.mnd.uscourts.gov, "forms" subdirectory. The list must indicate the exhibits the parties agree are admissible. For the exhibits not agreed on, the list shall include the grounds for objection. If exhibits are offered at trial, the following procedures must be followed:
 - (i) Plaintiff must mark its first exhibit as "P-1" and number the others sequentially. Defendant must mark its first exhibit as "D-1" and do likewise. The case number must appear on each exhibit.
 - (ii) Only exhibits that are identified on the exhibit list filed with the Court may be offered at trial, unless the omission is excused for good cause.

4. Witness Lists.

- a. By **Tuesday, June 20, 2023**, each party must file a list of the names and addresses of the witnesses the party intends to call at trial, as well as a brief description of the substance of the expected testimony of each witness.
- b. The witness list should be submitted using the federal Witness List form available through the District of Minnesota website, www.mnd.uscourts.gov, "forms" subdirectory.

¹ In all non-jury trials, counsel must submit proposed findings of fact and conclusions of law in addition to the items listed above. Parties' proposed findings of fact and conclusions of law shall be submitted by **June 20, 2023**.

- c. Any person who is not identified on a party's witness list may not testify at trial, unless the omission is excused for good cause.

5. Deposition Designations.

- a. By **Monday, June 12, 2023**, the parties must exchange lists of the specific deposition testimony that they intend to offer at trial. Any deposition testimony that is not identified on a party's list may not be offered at trial, unless the omission is excused for good cause.
- b. Deposition designations must be served and filed by **Tuesday, June 20, 2023**. The submission must indicate the deposition designations the parties agree are admissible. Any party who wishes to object to any designations must submit their objections on this same date.

6. Motions in Limine. No more than five motions in limine may be submitted, and all must be served and filed by **Tuesday, June 20, 2023**. Responses to all such motions must be filed by **Monday, June 26, 2023**. Each motion in limine must be limited to one discrete issue. No brief in support of, or in opposition to, any motion in limine may exceed 3000 words. No reply brief may be submitted with respect to any motion in limine without prior permission from the Court.

7. Stipulations and Settlement. The parties are strongly encouraged to meet in advance of trial, to make every effort to settle the case, and, if settlement is not reached, to make every effort to agree on as many trial-related matters as possible, such as facts that may be treated as established and exhibits that may be treated as authentic.

8. Proposed Voir Dire. For jury trials, each party must file any questions that it requests the Court ask prospective jurors during voir dire examination by **Monday, June 12, 2023**. Proposed questions must be e-mailed to blackwell_chambers@mnd.uscourts.gov.

9. Joint Introduction to the Case. For jury trials, by **Tuesday, June 20, 2023**, the parties must **jointly** file a proposed introduction to the case that Judge Blackwell can read to prospective jurors during voir dire. The introduction should briefly describe the parties, the major issues, the Plaintiff's position, and the Defendant's position. The joint proposed introduction to the case must be e-mailed to blackwell_chambers@mnd.uscourts.gov.

10. Joint List of Parties, Attorneys, and Witnesses. For jury trials, by **Tuesday, June 20, 2023**, the parties must **jointly** file an alphabetized list of the names of all parties, attorneys, and witnesses. Judge Blackwell may provide that list to prospective

jurors during voir dire. The joint list of parties, attorneys, and witnesses must be e-mailed to blackwell_chambers@mnd.uscourts.gov.

11. Joint Proposed Jury Instructions. For jury trials, no later than **Monday, June 12, 2023**, the parties must exchange proposed jury instructions. The parties must then meet and confer and make every effort to resolve disagreements over those proposed instructions. The parties must **JOINTLY** file **one** set of proposed jury instructions by **Tuesday, June 20, 2023**. The proposed instructions must be e-mailed to blackwell_chambers@mnd.uscourts.gov.

- a. Each proposed instruction must be numbered, appear on a separate page, and identify supporting legal authority.
- b. Instructions or parts of instructions on which the parties agree must appear in plain type.
- c. If a party seeks (over objection) to have language added to or deleted from an instruction, the proposed change must show (through red-lining, underlining, strikeouts, or other similarly effective typographic methods) how the proposal differs from another proposal. The primary legal authority on which the party relies must be provided and clearly associated with each party's proposals.

12. Proposed Special Verdict Form. For jury trials, the parties must attempt to agree on a proposed special verdict form. If they succeed, that form must be filed by **Tuesday, June 20, 2023**. If they do not succeed, the parties must file their own proposed forms by **Monday, June 20, 2023**. The proposed special verdict form(s) must be e-mailed to blackwell_chambers@mnd.uscourts.gov.

Date: April 25, 2023

s/ Jerry W. Blackwell
JERRY W. BLACKWELL
United States District Court Judge

SUMMARY OF DEADLINES

BY MONDAY, June 12, 2023:

- ☐ Exchange lists of exhibits and make exhibits available
- ☐ Exchange deposition designations
- ☐ Exchange proposed jury instructions

BY TUESDAY, June 20, 2023:

File and serve:

- ☐ Trial briefs
- ☐ Lists of exhibits
- ☐ Copies of exhibits
- ☐ Witness lists
- ☐ Deposition designations and objections
- ☐ Motions in limine
- ☐ Proposed Voir Dire questions
- ☐ Joint Introduction to the Case
- ☐ Joint list of parties, attorneys, and witnesses
- ☐ Proposed jury instructions
- ☐ Proposed special verdict forms
- ☐ Proposed findings of fact and conclusions of law (if appropriate)

Send to Judge Blackwell's Chambers:

- ☐ *Via overnight delivery, U.S. Mail, or courier:* One courtesy hard copy of exhibits and two courtesy hard copies of all other documents filed and served. All exhibits and documents provided in hard copy must also be provided in electronic form (i.e., via a USB flash drive).
- ☐ *Via e-mail to blackwell_chambers@mnd.uscourts.gov:* The proposed voir dire questions; joint introduction to the case; joint list of parties, attorneys, and witnesses; proposed jury instructions; proposed special verdict forms; and proposed findings of fact and conclusions of law (bench trials only).

BY MONDAY, June 26, 2023:

- ☐ File and serve responses to motions in limine. Send courtesy copies to Judge Blackwell's chambers.

CASES SET FOR TRIAL

1. *Berner v. Metropolitan Counsel*, 21-1639 (JWB/TNL)

Type: ADA, Employment Discrimination

Estimated Length: 4 days

Courthouse: St. Paul

Counsel: Nicolas Kaylor
612-334-9015

Susan Ellingstad
612-339-0981